



STATE OF NEVADA

Nevada Tahoe Regional Planning Agency

901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721

MINUTES

November 28, 2007

Meeting Place

North Tahoe Conference Center
8318 North Lake Boulevard
Kings Beach, California

MEMBERS PRESENT

Jim Galloway, Chair
Charles Ruthe, Vice Chair
Allen Biaggi
Shelly Aldean
Coe Swobe
Mimi Moss
Ross Miller

MEMBERS ABSENT

None

OTHERS PRESENT

Pamela Wilcox, Executive Officer
Nhu Nguyen, Nevada Office of Attorney General
Jim Lawrence, Division of State Lands
Charlie Donohue, Division of State Lands
Gary Midkiff
Lew Feldman, Boulder Bay LLC
Dan Siegel, California Attorney General Office
Rochelle Nason, League to Save Lake Tahoe
Steve Teshara, North Lake Tahoe Resort Association
John Muller, Boulder Bay LLC
Steven Haynes, Boulder Bay LLC
Jamie Hansen, Boulder Bay LLC
Michael Donahoe, Tahoe Area Sierra club
Brian Helm, Boulder Bay LLC
Roger Wittenberg, Boulder Bay LLC
John Singlaub, TRPA
Lyn Barnett, TRPA
Carl Young, League to Save Lake Tahoe
Fred Hodgson, Lakeside LLC
Jennifer Quashnick, Sierra Club – Tahoe Group

1.a. ROLL CALL

The meeting was called to order by Chair Jim Galloway at 12:18 pm. A roll call was taken and a quorum was present.

1.b. APPROVAL OF AGENDA

Mr. Galloway asked for the approval of the agenda.

Shelly Aldean made a motion to approve the agenda. The motion was seconded by Ross Miller and passed by the affirmative vote of all members present (5-0).

1.c. APPROVAL OF MINUTES OF THE APRIL 11 2007 MEETING

Mr. Galloway asked for the approval of the minutes.

Charles Ruthe made a motion to approve the minutes of the April 11, 2007 meeting. The motion was seconded by Mr. Miller and passed by the affirmative vote of all members present (5-0).

2. REPORT OF THE EXECUTIVE OFFICER ON ACTIVITIES OF THE AGENCY, APRIL 2007 TO NOVEMBER 2007.

Pam Wilcox reported that the lawsuit filed regarding the April 2007 board approval of the Cal-Neva project was dismissed. Ms. Wilcox acknowledged Nhu Nguyen from the Nevada Attorney General's office who argued the case for NTRPA and Joanne Marchetta who argued the case on behalf of TRPA. Ms. Wilcox summarized that the court decision concluded that the board decision was supported by substantial evidence and was within the confines of the law. Chair Galloway expressed gratitude to the board for allowing discussion and addressing the points raised on the record so that the issues brought before the court are now clarified as part of the written record.

Ms. Wilcox briefed the board on the workload of the NTRPA since the last meeting. Ms. Wilcox reported that the workload has been light, and with the exception of Agenda item 4 that will be heard later, there were no other NTRPA activities to report for the timeframe.

Lastly, Ms. Wilcox briefed the board that state agencies have been asked to prepare eight percent budget cuts and that staff has done some preliminary work. Final decisions will be made by the governor's office and the budget office. Ms. Wilcox stated that the annual operating budget for NTRPA was \$1,796 and that an eight percent reduction would amount to \$144.

3. ACTION ON APPOINTMENT FOR AT LARGE MEMBER FOR NTRPA

Mr. Ruthe nominated Coe Swobe. The nomination was seconded by Mr. Miller. Mr. Miller added that he believed the selection of the at large member was one of the more important duties of NTRPA and one that he took very seriously. Mr. Miller indicated that he had received positive feedback from the community regarding Mr. Swobe. There were no further nominations and the NTRPA board voted unanimously to re-appoint Mr. Swobe. Mr. Swobe abstained.

4. DISCUSSION/WORKSHOP – POSSIBLE ORDINANCE AMENDMENT REGARDING THE REBUILD AND RELOCATION OF A STRUCTURE HOUSING GAMING UNDER CERTAIN CONDITIONS.

Jim Lawrence gave a summary of the staff report for the discussion item. Mr. Lawrence stated the agency had received a written request from the applicant for a possible ordinance amendment that would allow for the demolition and rebuild of a structure housing gaming elsewhere on the property. Mr. Lawrence also stated that the applicant came forward with a draft amendment that was included in the packet.

Mr. Lawrence indicated that staff basically did three things in reviewing the request. First, staff reviewed applicable Compact language; second, staff reviewed previous board actions related to the rebuild of structure; and third, staff reviewed the legislative record for the senate bill that put the compact language in Nevada statutes.

Regarding the compact language, Mr. Lawrence explained that the two most applicable sections were Article VI (d) (1) and Article VI (e). Article VI (d) (1) stated that every structure housing gaming that existed prior to May 4, 1979 or whose construction was approved prior to May 4, 1979 shall be recognized. In addition, the construction or use of any structure not so existing or approved was prohibited. Mr. Lawrence pointed out that it was not clear whether this section applied to demolitions and rebuilds. Mr. Lawrence went on to explain that Article VI (e) clearly states that “any structure housing licensed gaming may be rebuilt or replaced to a size not to exceed the cubic volume, height and land coverage existing or approved on May 4, 1979, without the review or approval of the agency or any planning or regulatory authority”. Mr. Lawrence added that this section was silent as to whether the rebuild had to occur within the existing footprint of the building or if the rebuild could occur elsewhere.

Regarding past projects relevant to the issue, Mr. Lawrence explained that staff could find two applicable cases. The first was 1980 when Jim Kelly’s Nugget was destroyed by fire and subsequently rebuilt. Although there was no formal board action on this project there were relevant notes in the file and references to the Nugget rebuild in the April staff summary for the Hyatt Regency project. Mr. Lawrence summarized that when the Nugget was destroyed in 1980 that the owners had contemplated rebuilding the structure in a different location on the property. At the time, there was some debate between staff and the owners as to whether that was allowed. Mr. Lawrence explained that apparently staff had advised the Nugget owners that rebuilding a structure in a different location was not permitted. The owners of the Nugget disagreed with this interpretation, however, the owners ultimately decided to rebuild the structure in the original location and that the question of whether a structure could be rebuilt in a different location was not formally addressed by the board.

Mr. Lawrence then discussed the second applicable project. In April, 2001 the board heard a project in which the Hyatt Regency requested to demolish the Aspen Terrace wing of the structure and reconfigure it as additions to the main building. The Aspen Terrace wing consisted of hotel rooms and some public area. Mr. Lawrence explained that the board heard the project on April 19, 2001 and that the board voted to continue the proposal for one month to allow parties to discuss the issue of appropriate reconfigurations of structures housing gaming. A consensus group was formed comprised of representatives from TRPA, NTRPA, the gaming industry, the League to Save Lake Tahoe, and the California Attorney General’s office. The group did not object to the Hyatt project although there was some concern that incremental changes/modifications could eventually culminate in migration to new sites. The NTRPA board approved the Hyatt project at the May 2001 meeting.

Lastly, Mr. Lawrence explained that staff researched the legislative testimony of SB 323 which was the Senate bill that placed the compact language in Nevada statutes. Mr. Lawrence explained that there was testimony during the committee hearings that the intent of SB 323 would

cap or freeze gaming at current levels (i.e. 1979). However, there was also testimony stating that although gaming would be capped at current levels, the legislation should allow for rebuilding structures not just because the structures were destroyed or damaged, but also due to obsolescence. Mr. Lawrence stated that the original language of SB323 read that "If any structure housing licensed gaming is destroyed or damaged, the structure may be rebuilt or replaced to a size not to exceed the existing or approved cubic volume and land coverage." Testimony at the committee meetings included comments that the "destroyed or damaged" language should be omitted because conditions may change in the basin 10, 20, or 30 years into the future and that it may be necessary to rebuild structures due to obsolescence. The language "destroyed or damaged" was removed from the bill and Mr. Lawrence stated that staff concludes that the legislative intent was allow for the rebuild of structures due to obsolescence, but the legislative record was silent as to whether the intent was to allow for a rebuild in a different location or if the rebuild must be within the existing building footprint.

Mr. Ruthe asked staff how much area or acres is devoted to gaming at the north shore.

Mr. Lawrence responded that he did not have actual acreage or square footage figures with him, but the casinos at the north shore were the Hyatt at Incline Village and the Biltmore, Nugget, Crystal Bay Club and Cal-Neva at north Stateline.

Mr. Galloway asked staff about SB323 and what it states regarding restricting the rebuild of structures.

Mr. Lawrence responded that after reviewing SB323 and associated testimony it appears that the legislature contemplated that there would be a time when structures would need to be rebuilt due to obsolescence and not just because they were either damaged or destroyed. However, there was not any language that restricted the rebuild to the existing footprint or specific language that allowed for rebuilding in another location.

Mr. Galloway asked if the final bill contained a restriction that the building can only be rebuilt if the building was destroyed.

Mr. Lawrence stated that there was not such a restriction and that restrictions were related to cubic volume and land coverage.

Allen Biaggi asked when the Harvey's bombing occurred and whether that was before or after the passage of SB 323.

Ms. Wilcox responded that she believed that the Harvey's bombing was in the 1980's which would have been after the passage of SB 323. Ms. Wilcox continued that most of the Harvey's gaming authorizations were due to approved plans being in place prior to May 4, 1979.

Ms. Aldean asked staff if the state Attorney General's office has indicated whether the draft ordinance amendment included in the packet was or was not in conflict with the compact.

Ms. Wilcox clarified that the draft ordinance amendment was only included in the packet because it was submitted by the applicant and that staff has not reviewed the amendment for consistency with the compact nor is staff making a recommendation on the draft amendment.

Lew Feldman representing the Boulder Bay Corporation stated the circumstance at the time when the compact was adopted was the idea that gaming was bad and that it needed to be constrained or it might overrun the basin. There was also a feeling at the time that circumstances might be different in the future and that it is safe to say that things are now different. Gaming is currently struggling, it is not the driver it was when the compact was adopted, Indian gaming was not on the radar, and the proliferation of gaming in California was not anticipated or foreseen.

Mr. Feldman said that the Tahoe Biltmore is a structure that was constructed in 1946 and that it was not constructed with an eye for the TMDL's or any other advances that have occurred through science and experience. Reconstruction of the Tahoe Biltmore within the existing envelope would perpetuate the misdeed for decades into the future. Mr. Feldman continued that what Boulder Bay has proposed is recognition that gaming is no longer the main attraction and that the environment and economy can best be served by that recognition. Mr. Feldman explained that Boulder Bay is one of the applicants in the CEP process that the TRPA governing board heard a presentation on earlier in the morning.

Mr. Feldman described the project as consisting of ten contiguous parcels on fourteen acres. The proposal is to take gaming off of the frontage, creating a pedestrian friendly experience and creating more of a destination resort experience similar, but on a more appropriate scale, to the redevelopment on south shore where redevelopment has created environmental, economic and social benefits. Mr. Feldman stated that there is no reason why that same type of experience cannot be achieved at north Stateline, bringing significant environmental benefits and economic stability to a declining marketplace, as well as improve the social fabric of the area.

Mr. Feldman continued that he had discussed the issue with NTRPA staff, as well as the California Attorney General's office and the League to Save Lake Tahoe, and in response to that input drafted the ordinance that was included in the packet. Mr. Feldman also stated that he discussed the proposed ordinance with the chair of the south shore gaming alliance and that he was comfortable with the language in the ordinance. Mr. Feldman concluded that it would be in the best interest of the lake to allow for the flexibility to redevelop all areas around the lake that have had development, including north Stateline. In the particular case of the Boulder Bay project, gaming would significantly be reduced. Mr. Feldman stated that he was not necessarily a proponent of reducing gaming in all cases, however, in the case of the Boulder Bay project, gaming would be reduced.

Ms. Aldean stated that she is always wary of adopting ordinance amendments for specific projects. She asked Mr. Feldman if, to his knowledge, all of the casinos were located in adopted community plan areas. Mr. Feldman responded that they were.

Ms. Aldean stated that although the proposal to reduce gaming might make sense in the case of Boulder Bay that she was opposed to requiring a reduction of gaming. Ms. Aldean continued that in light of all of the struggles facing the gaming industry that the industry needed more flexibility not restrictions.

Gary Midkiff testified that he has been involved with TRPA and compact issues since 1978, both with the California Governor's office and resource agencies, subsequently with TRPA, and since then has represented a number of the casinos. Mr. Midkiff stated that he believed that the idea being discussed was an excellent idea and that there is a need to allow for the flexibility of redevelopment. Mr. Midkiff pointed out that many of the casinos in the north shore were built in the 1930's and 1940's and are outdated. Mr. Midkiff continued that he represented the Hyatt when the rebuild was approved and at the time there was a group put together to come up with a redevelopment plan for the casinos (including south shore casinos) and to take on the issue of provisions for redevelopment. However, with Indian gaming and other pressures just starting at the time, the casinos did not desire to put forth the necessary resources to continue discussions with TRPA and NTRPA about redevelopment. Mr. Midkiff urged the NTRPA board to have further discussions and bring in all the other casino owners, particularly if the board is contemplating requirements or restrictions.

Dan Siegel of the California Attorney General's office agreed with Mr. Midkiff's recommendation that a group of all parties be convened to discuss the issue. Mr. Siegel explained that when the compact was amended in 1980 the issue of gaming was extremely controversial. A compromise was reached to resolve the controversy by grandfathering in existing structures and prohibiting

any new structures. Mr. Siegel continued that included in the compact was the provision allowing for the replacement of existing structures, but the language in the compact was ambiguous as to what that means. Whether that means the replacement on the precise, same footprint which was an interpretation by NTRPA at the time of the compact amendment or whether a different footprint is permitted. Mr. Siegel explained that what courts do when there is ambiguous language is that they look into the context that the language is used. In this case, when you look at the context, the compact provides that where a casino is rebuilt, the rebuild is permitted without TRPA or NTRPA review. Mr. Siegel said that makes sense if the rebuild is within the existing footprint. However, that does not make sense if the rebuilding is on a new footprint because that could potentially mean that a casino could be rebuilt in a SEZ or on high hazard land. Mr. Siegel said that it is highly doubtful that this was intended by the State of California or Nevada when they entered into the compact. Therefore, a court would likely interpret the ambiguous language as to only rebuild on exactly the same footprint.

Mr. Siegel continued that Mr. Feldman has given some practical reasons on why it would be useful to have some flexibility in this area and that the California Attorney General's office is very open to discussions that could bring about flexibility. Further, that the concepts brought forward by Boulder Bay were a very good starting point and that a group to flesh the concepts out would be very helpful.

Rochelle Nason of the League to Save Lake Tahoe agreed with Mr. Midkiff and Mr. Siegel in that a group of all concerned parties should be assembled to deal with the issue on a policy basis rather than a project basis. Ms. Nason added that it is to everyone's benefit that the rules be made clear to all parties. Ms. Nason continued that she felt strongly that the intent of the drafters of the compact was clear that casino rebuilds were to be within the existing footprint, but that she also agreed with the notion that, due to changes over time, to develop an interpretation that allows greater flexibility that could be to the benefit of everyone concerned. Ms. Nason stated that the League would be very interested in working on the issue with other concerned parties.

Steve Teshara on behalf of the North Lake Tahoe Resort Association stated that now is the time to deal square up with the issue and to allow the flexibility needed in today's contemporary planning environment. Mr. Teshara added that the compact was put together in a different time and a different world, and in the past there was a tremendous resistance to deal square up with the issue of flexibility. Mr. Teshara supported the idea of forming a group to work on the issue so that clear findings could be made so that it is clear what the policy is of NTRPA, as well as the policy of others. Mr. Teshara hoped that it would not be a long process of many months and that any policy adopted would be clear so that the issue does not have to be dealt with in the future.

Mr. Galloway asked Mr. Siegel why an ordinance is needed rather than review on a project basis. Mr. Galloway pointed out that the Hyatt project was approved without an ordinance amendment and that the project involved rebuilding outside of the existing footprint. Mr. Galloway asked what would the California AG office opinion be if an ordinance is not adopted and would they oppose future actions involving rebuilding structures outside of the existing footprint. Mr. Siegel responded that their concern is setting a precedent and that an approval for this project may set precedent for other projects especially if the terms of the approval are not clear. Mr. Galloway asked if it was conceivable to come up with an ordinance that the California AG office would agree to. Mr. Siegel responded yes. Mr. Siegel added that by agreeing to an ordinance that there would be some things that they would be giving up and in return they would like to see a movement away from gaming, such as a reduction in gaming square footage. Mr. Siegel recognized that there are some issues with this and that the AG office is very open to working with the parties to see if there is something that would work for all.

Ms. Aldean stated that it is all about tradeoffs. When the compact was approved there was a wholesale objection to gaming. Now there doesn't seem to be that same objection with the amount of gaming now occurring in California. Perhaps there is still that objection at Lake Tahoe, but hopefully there would be consideration for all of the possible environmental benefits of relocating a gaming structure and as a consequence that it may not need to be mandatory to reduce the amount of gaming square footage if all of the environmental benefits are taken into consideration. Ms. Aldean hoped that there would be sufficient flexibility in the process to account for all of those benefits. Mr. Siegel responded that they are open to discussion, whereas in 1980 they may not have. Mr. Siegel continued that there is still a concern about the right thing in the wrong place and that perhaps gaming which is a non-environmentally oriented activity may not be the most appropriate activity at Lake Tahoe.

Mr. Feldman stated that he welcomed the opportunity to bring together the interested parties, but wanted to emphasize that this project is participating in the CEP process which involves an investment in plans and designs. They are continuing with the process optimistic that something can be worked out regarding NTRPA, but they also cannot wait indefinitely for the NTRPA issues to be resolved.

Mr. Biaggi stated that he had been hearing an overall desire of the NTRPA body to direct the applicant to move forward in a broader context to get the parties together to draft an ordinance that addresses the issue on a policy level rather than at the project level.

Ms. Moss echoed Mr. Biaggi and Ms. Aldean that a solution is needed to allow the flexibility for casino properties to redevelop. Ms. Moss added that the precedent had already been set when the NTRPA approved the Hyatt project, which allowed for the reconstruction outside of the existing of the footprint.

Mr. Galloway requested that by the next meeting he would like an opinion from the Nevada Attorney General's office as to whether an ordinance allowing for the relocation of a gaming structure could meet the legal requirements of the compact. Mr. Galloway added that he heard an interpretation from the California AG office that the compact provision allowing for the rebuild of existing structure does not require other agency approvals. Mr. Galloway asked for an additional opinion from the Nevada AG office as to whether this was a correct interpretation.

Mr. Feldman stated that he agreed with Mr. Siegel that if a building was to be rebuilt within an existing footprint that it would be exempt from review. However, Mr. Feldman believed that if a structure was to be rebuilt outside of the existing footprint, it would not be exempt from review.

Direction was given to staff to bring concerned parties together with the intent of drafting an ordinance addressing the issues, and that a special meeting of the board on the issue would be held no later than February 15, 2008.

6. BOARD MEMBER COMMENTS

There were no board member comments.

7. PUBLIC COMMENTS

There were no public comments.

8. ADJOURN

The meeting was adjourned at 1:14 p.m.

Note: These minutes should be considered draft minutes pending their approval at a future meeting of the Nevada Tahoe Regional Planning Agency governing board. Corrections and additions could be made prior to approval.